

Honorable John C. Coughenour

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZANGO, INC.,

Plaintiff,

v.

KASPERSKY LAB, INC.,

Defendant.

No. C-07-0807-JCC

DECLARATION OF ANGELO
GENTILE IN SUPPORT OF
OPPOSITION TO PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

I, Angelo Gentile, declare as follows:

1. I am the Chief Financial Officer of Kaspersky Lab, Inc., which is based in Massachusetts ("Kaspersky USA"). I have been Chief Financial Officer since the company's inception in 2004. I have personal knowledge of the facts discussed below.

2. Kaspersky USA is a reseller of internet security software (*e.g.*, anti-virus software, firewalls, and spam filters) developed by Kaspersky Lab ZAO, a Russian company based in Moscow, Russian Federation ("Kaspersky Moscow"). Despite sharing a name, Kaspersky USA and Kaspersky Moscow are unrelated. That is, Kaspersky Moscow does not own or control, in whole or in part, Kaspersky USA, and vice versa. Neither company is a parent, subsidiary, affiliate, sister company, partner, or division of the other. The companies do not share officers, directors, or employees.

DECLARATION OF ANGELO GENTILE IN SUPPORT OF
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(C-07-0807-JCC) — 1

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1 3. More specifically, as seen in the attached Articles of Organization (**Exhibit**
2 **A**), Kaspersky USA is a company that is wholly owned by Stephen A. Orenberg, the
3 President of the company. Mr. Orenberg owns all of the shares of the company. Kaspersky
4 Moscow owns no shares of the company. Likewise, Kaspersky USA has no ownership
5 interest in Kaspersky Moscow.

6 4. Kaspersky USA was incorporated in November 2004 and was previously
7 based in Burlington, Massachusetts, a suburb of Boston. Kaspersky USA recently moved to a
8 neighboring town, Woburn. Its current address is 500 Unicorn Park, Woburn, Massachusetts.
9 Kaspersky USA has thirty-five employees, most of whom are based in Woburn. Kaspersky
10 USA has no employees based in Washington state and no offices or other facilities there.

11 5. Kaspersky USA is a non-exclusive distributor of the software products of
12 Kaspersky Moscow. Attached is a true copy of the Non-Exclusive Distribution Agreement,
13 dated April 6, 2005. (**Exhibit B**). Kaspersky USA has been distributing the Kaspersky anti-
14 virus and other security software since approximately that date.

15 6. This distribution arrangement works as follows. Kaspersky Moscow
16 develops the anti-virus software and other internet security products. That means that
17 Kaspersky Moscow designs the system architecture, writes the software code, debugs the
18 code, and otherwise produces and maintains the software. While Kaspersky USA may from
19 time to time pass along to Kaspersky Moscow suggestions about improving the software,
20 Kaspersky USA has no software programmers and otherwise has no control over the design,
21 development, coding, debugging, or maintenance of the software products.

22 7. Kaspersky USA simply resells the Kaspersky software products in the United
23 States. Kasperksy USA acquires the software under license from Kaspersky Moscow and
24 pays a royalty to Moscow based on sales. Kaspersky USA uses the trade name "Kaspersky"
25 under a trademark license from Kaspersky Moscow. Again, Kaspersky USA does not design,
26 develop, or maintain the software.

8. Kaspersky USA's distribution agreement and license to sell the software products are non-exclusive. Kaspersky Moscow also has other distributors of its products in the United States. For example, as I understand it, Kaspersky Moscow sells directly to some original equipment manufacturers ("OEMs"), such as computer hardware companies, who install Kaspersky's anti-virus software on hardware that they then sell to end users. Accordingly, a given user of the Kaspersky anti-virus software did not necessarily purchase the product through Kaspersky USA (or from one of the retailers to whom Kaspersky USA sells). It is equally likely that the end user had purchased a computer that the OEM has pre-installed with Kaspersky software, without any involvement of my company.

9. The Non-Exclusive Distribution Agreement specifies that Kaspersky USA has no control over Kaspersky Moscow:

12.1 Distributor acknowledges that it is acting for the limited and sole purposes provided in the Agreement. This Agreement does not constitute Distributor as an agent, employee, franchise or sub-franchise of Licensor, and Distributor shall have no authority to bind Licensor in any respect.

Exhibit B at p. 5 (emphasis added).

10. In addition, the Non-Exclusive Distribution Agreement also provides that Kaspersky Moscow owns and controls the software and that Kaspersky USA acquired only limited rights in the software (*i.e.*, the right to resell it):

7.1. Acknowledgement. Distributor acknowledges that (a) as between Licensor and Distributor, all right, title and interest in and to the Products (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are owned by Licensor and its licensors (if any), (b) this Agreement in no way conveys any right or interest in the Products other than the limited right and license granted in Section 2.1, (c) the Products are protected by the copyright laws of the United States and other countries and international treaties, and (d) Licensor asserts that the Products embody valuable confidential and secret information of Licensor or its licensors (if any), the development of which required the expenditure of considerable time and money.

Exhibit B at p. 3.

CERTIFICATE OF SERVICE

I certify that on June 4, 2007, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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In addition, paper copies of the foregoing document will be mailed by United States Postal Service to non CM/ECF participants, if any.

/s/ Bruce E.H. Johnson

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